IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17705 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANUBEN PANCHAL AND CHANDRIKABEN PANCHAL LEGAL HEIRS

Versus

CHIEF COMMISSIONER OF INCOME TAX

Appearance:

1. Special Civil Application No. 17705 of 2003
MR JP SHAH with MR MANISH J SHAH for Petitioner No. 1
MR BHARAT T RAO for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 05/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr BT Rao, learned standing counsel for the revenue waives service of Rule.

In the facts and circumstances of the case, the

petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 14.10.2003 (Annexure "O") passed by the Chief Commissioner of Income-tax, Surat under Section 119 (2)(a) read with Sections 234A, 234B and 234C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") granting partial waiver of interest under Section 234A of the Act and rejecting the petitioner's request for waiver of interest under Sections 234B and 234C of the Act.

3. The controversy centres around waiver of interest for assessment years 1992-93, 1993-93 and 1994-95. The interest was levied as under :-

Asstt. Years	Interest Charged u/s.234A	u/s234B	u/s234C	Total
1992-93	2,62,949	1,66,925	13,442	4,43,316
1993-94	95,120	81,571	6,122	1,82,813
1994-95	65,842	57,382	6,143	1,29,367
	4,23,911	3,05,878	25,707	7,55,496

Original petitioner-Smt. Shantaben D Mistry, widow of late Mr Dahyabhai C Mistry, filed a petition for waiver of interest under the above provisions stating that her husband expired on 27.11.1989 leaving the petitioner and two married daughters as his survivors. The entire income of the deceased-husband was includible in her income and she was not aware of this position until October, 1993 and she started making up the accounts of the deceased-husband and arranging for payment of taxes. The returns for assessment years 1992-93, 1993-94 and 1994-95 were submitted on 5.11.1996. The petitioner paid all the taxes due amounting to Rs.22 lakhs and odd amount. The petitioner had filed returns of income voluntarily and she had paid a lot of taxes over the years and no taxes were due and only a part of the demand relating to interest was due. The original petitioner prayed for waiver in view of the following facts :-

"(a) Mr DC Mistry expired on 27th November,

1989 at the sage of 78 years and prior to his death for 2 to 3 years he was in senile condition. He was uneducated and got frustrated as the business which he was running as a Managing Director in the name of Navjivan Udyog Mandir Pvt. Ltd. was not successful and the Company was defunct since 1989.

(b) Both the petitioner and Mr Mistry shattered by the traumatic incident of car accident in which their son-in-law, Dr Ishvarlal Panchal expired on 16.07.87 at the age of 45 leaving his widow and three minor children.

(c) The only source of income of the deceased was dividend from the group Companies.

(d) The petitioner was aged more than 75 years.

(e) After his death it came to the light of the legal heirs that, he did not attend to his tax matters and the income tax and wealth tax demands were pending from A.Y. 1986-87 onwards in his case and in the case of the petitioner and also in case of Navjivan Udyog Mandir Pvt. Ltd. and the charitable trust with which he was associated.

(f) He was survived by his widow (the petitioner) and 2 daughters out of whom, one has become widow on account of death of her husband in car accident as pointed out in item (b) and there was nobody to look after the family as there was no male person, the elder daughter is not educated and the younger one, who is B.A., became a widow as stated earlier and was shattered and in depressed mental condition.

(g) The petitioner (Smt. Shantaben) was a housewife. There was only one employee i.e. Shirubhai Mistri, who was assisting late D.C. Mistry and was looking after the accounts and tax matters. He abruptly left in 1988 leaving the mess.

(h) The legal heirs made the payment of taxes out of the dividend income received from ASPW and group Companies from March 1990 onwards in respect of liabilities of the petitioner, late D.C. Mistry, Company and the trust. The aggregate tax payment was Rs.22,57,031/= and they could not file the returns of the above year till November 1996 and July 1997 as they could effect the payments only in October 1996.

The petitioner, therefore, submitted that the delay in filing the returns and also the delay in payment of taxes was due to unavoidable circumstances including the grave trauma because of the death of her son-in-law and death of her husband.

In fact, before the Chief Commissioner of Income-tax passed the order under consideration, original petitioner Shantaben D Mistry expired leaving behind her one uneducated daughter and the other daughter who is a widow.

After considering the aforesaid facts of the case, the Chief Commissioner of Income-tax, Surat was of the view that the ends of justice would be met if interest under Section 234A of the Act is waived to the extent of 50% for assessment years 1992-93, 1993-94 and 1994-95. However, the Chief Commissioner declined to grant such waiver in respect of interest under Sections 234B and 234C on the ground that relevant clause (e) of para 2 of the Circular dated 23.5.1996 which confers the power of waiver on the Commissioner was only applicable to the waiver of interest under Section 234A and not to waiver of interest under Section 234B or Section 234C of the Act. Hence, this petition.

4. At the hearing of this petition, Mr JP Shah, learned counsel for the petitioner has submitted that when the Chief Commissioner was of the view that the ends of justice demanded waiver of interest and 50% waiver is granted for interest under Section 234A of the Act, there was no reason for refusing waiver of interest under Sections 234B and 234C of the Act. When the discretion to grant waiver of interest is granted in a case where the return of income could not be filed by the assessee due to unavoidable circumstances and such return of income was filed voluntarily by the legal heirs without detection by the Assessing Officer, the same circumstances would be required to be considered for delay in payment of taxes under Sections 234B and 234C of

the Act. It is further submitted that in the instant case, the Commissioner ought to have granted full waiver under Sections 234A, 234B and 234C of the Act.

5. On the other hand, Mr BT Rao, learned counsel for the respondents has submitted that since the Chief Commissioner has already exercised his discretion to grant waiver of interest under Section 234A of the Act and not to grant waiver of interest under Section 234B or Section 234C of the Act, the impugned order does not call for any interference.

6. Sub-section (1) of Section 119 of the Act empowers the Central Board of Direct Taxes to issue such orders, instructions and directions to other income-tax authorities for the proper administration of the Act. Sub-section (2) provides that, without prejudice to the generality of the foregoing power, the Board may issue from time to time (whether by way of relaxation of any of the provisions of Sections 139 ... ... 234A, 234B, 234C .... or otherwise), general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions (not being prejudicial to the assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue ... .

The relevant portion of the Order as contained in the Notification dated 23.5.1996 issued under the aforesaid provisions reads as under :-

"In exercise of the powers conferred under clause (a) of sub-section (2) of section 119 of the Income-tax Act, 1961, the Central Board of Direct Taxes, hereby direct that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 234A, or section 234B or section 234C of the Act in the classes of cases or classes of income specified in paragraph 2 of this order for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax deem fit. However, no reduction or waiver of such interest shall be ordered unless the assessee has filed the return of income for the relevant assessment year and paid the entire tax due on the income as assessed except the amount of interest for which reduction or waiver has been requested for. The Chief Commissioner

of Income-tax or the Director General of Income-tax may also impose any other conditions deemed fit for the said reduction or waiver of interest.

2. The class of incomes or class of cases in which the reduction or waiver of interest under section 234A or section 234B or, as the case may be, section 234C can be considered, are as follows :-

(a) ....
(b) ....
(c) ....
(d) ....

(e) Where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer.

3. ... .

(Hereafter for the sake of convenience, both "reduction" and "waiver" are referred to as "waiver").

Clause (a) provides that if the delay on the part of the assessee in filing the return is on account of seizure of books of accounts and other documents during search and seizure operations under Section 132 of the Act, the benefit of waiver of interest can be granted. Clause (b) provides that if the delay in payment of advance tax is on account of seizure of cash during search and seizure operations under Section 132 of the Act, the benefit of waiver of interest can be granted. Clause (c) provides that where any income, other than the income from capital gains, is received or accrues after the due date of payment of the first or subsequent instalments of advance tax which was neither anticipated nor was in contemplation of the assessee and the advance tax on such income is paid in the remaining instalments, waiver of interest can be granted. Clause (d) provides that where any income which was not chargeable to income-tax on the basis of any order passed in the case of an assessee by the jurisdictional High Court, subsequently becomes taxable by consequence of any retrospective amendment of law or by the decision of the Supreme Court in the assessee's own case, waiver of interest can be granted.

7. It is thus clear that clauses (a) to (d) all state the circumstances beyond the control of the assessee and they may be considered as the species or illustrations of unavoidable circumstances or circumstances beyond the control of the assessee which is the genus contained in clause (e) providing that where a return of income could not be filed by the assessee due to unavoidable circumstances and such return of income is filed voluntarily by the assessee or his legal heirs without detection by the Assessing Officer, waiver of interest can be considered. It appears to the Court that when the circumstances leading to delay in filing of return of income are also the circumstances resulting into late payment of taxes and when the same set of circumstances are considered to be unavoidable circumstances responsible for the delay in filing of the return of income, ordinarily such circumstances would also qualify to be considered as unavoidable circumstances responsible for the delay in late payment of taxes.

8. The very first paragraph of the order confers power on the Chief Commissioner/Director General of Income-tax to waive interest charged under Section 234A, Section 234B or Section 234B of the Act and the classes of cases or classes of incomes specified in para 2 of the order. The condition precedent is that reduction or waiver of such interest can be ordered only after the assessee has filed the return of income for the relevant assessment year and paid the entire tax due on the income as assessed except the amount of interest for which reduction or waiver has been requested for.

There is no dispute about the fact that original petitioner-Shantaben Mistry, widow of Dahyabhai Mistry, had paid the entire tax due on the income as assessed except the amount of interest. Looking to the peculiar facts and circumstances of the case, even the Chief Commissioner himself was satisfied that there were unavoidable circumstances resulting into delay in filing of the returns and, therefore, the Chief Commissioner granted waiver of interest to the extent of 50%. Hence, applicability of the circular is not in dispute.

9. The facts in the instant case are already highlighted above. The husband of the original petitioner expired in November, 1989 at the age of 78 years. Prior to his death, he was in senile condition. One son-in-law Dr Ishvarlal Panchal had already expired in a car accident in July 1987 at the age of 45 leaving

behind his widow (i.e. the younger daughter of the original petitioner) and three minor children. The elder daughter is not educated and the younger one, who is B.A., lost her husband prematurely at the age of 45 years. There was only one employee who was assisting late Mr Dahyabhai C Mistry and was looking after the accounts and tax matters and he had abruptly left in 1988 leaving the mess. The original petitioner had clearly stated in her waiver petition that the delay in filing the return was on account of the fact that there was delay in arranging for funds. In this set of tragic circumstances, if the same have been considered to be unavoidable circumstances for the purpose of waiver of interest under Section 234A of the Act, in the facts of this case, the Court is of the view that the same would have to be considered as unavoidable circumstances for the purpose of reduction/waiver of interest under Sections 234B and 234C as well. The reasoning of the Chief Commissioner that Clause (e) of the notification only deals with the late filing of return of income overlooks the rationale for conferring the power of reduction/waiver of interest. What is emphasized by para 1 of the order is that the taxes due must have been paid except the interest in question. Various Clauses (a) to (e) merely illustrate the different facets of the underlying principle that waiver of interest is to be considered when the delay on the part of the assessee is due to unavoidable circumstances or on account of the circumstances beyond his control. Even when the assessee's premises are subjected to search and seizure and the books of accounts are seized and cash is seized and, therefore, the assessee is unable to file the returns within time or to pay the taxes within time, the Central Board of Direct Taxes expects the Chief Commissioner/Director General of Income-tax to view such defaults with leniency. Under the circumstances, when the assessee is able to satisfy the Chief Commissioner that the delay in filing the return of income was due to unavoidable circumstances, it will be absurd to hold that the assessee is not permitted to persuade the Chief Commissioner/Director General of Income-tax to condone the delay in late payment of taxes when such delay is also due to same unavoidable circumstances or for reasons beyond the control of the assessee. The trauma which the original petitioner had to undergo at the age of 75 years when she not only lost her husband, but had also lost her younger son-in-law were the circumstances which were required to be considered by the Chief Commissioner in the context of the Indian social conditions and these circumstances merit as much consideration as, if not more than, the circumstances of an assessee who is found to

have filed tax returns or is found to have paid taxes beyond the stipulated time because his books of accounts or cash were seized during the proceedings for search and seizure under Section 132 of the Act.

10. As regards the extent of reduction/waiver, the learned counsel for the petitioner has invited our attention to the decision of this Court in Vinodchandra C Patel vs. CIT, (1995) 211 ITR 232. In the said case, this Court interfered with the order of the Commissioner granting only 50% reduction. This Court observed that the orders impugned in that petition appear to have been passed without proper application of mind and ordinarily the Court would have quashed the orders and sent the matters back to the Commissioner for the purpose of passing fresh orders after proper application of mind, but the matters were 12 to 13 years old and looking to the amounts, thought it fit to put an end to the litigation by modifying the impugned orders passed by the Commissioner to the extent that the waiver of interest shall be 75% in one case and 50% in another case.

11. In the facts of the present case also, we are of the view that since we have found that the Chief Commissioner declined to consider the request for reduction/waiver of interest under Sections 234B and 234C of the Act by refusing to exercise the jurisdiction vested in him and also because the Chief Commissioner has not given reasons for limiting the reduction of interest under Section 234A to only 50%, the impugned order would deserve to be quashed and set aside. However, instead of remanding the matter to the Chief Commissioner for considering the petitioner's request for full waiver of interest at this stage when the dispute pertains to assessment years 1992-93, 1993-94 and 1994-95, we are of the view that this is a fit case for granting waiver under Sections 234A, 234B and 234C of the Act to the extent of 75%.

12. The petition is accordingly partly allowed. The impugned order dated 14.10.2003 passed by the Chief Commissioner of Income-tax, Surat at Annexure "O" to the petition is modified to the extent that the petitioners herein shall be granted waiver of interest under Sections 234A, 234B and 234C of the Income-tax Act, 1961 for assessment years 1992-93, 1993-94 and 1994-95 to the extent of 75%, that is, the petitioners shall be liable to pay only 25% of interest levied on them under Sections 234A, 234B and 234C of the Income-tax Act, 1961 for the aforesaid assessment years.

Rule is made absolute to the aforesaid extent.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-